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Supreme Court, U.S.
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No. 00-1240

In the Supreme Court of the United States

TRI-STATE COACH LINES, INC., on behalf of itself and others similarly situated, SAM VAN GALDER, INC., on behalf of itself and others similarly situated, ADVANTAGE LIMOUSINE, INC., on behalf of itself and others similarly situated,

Petitioners,

v.

METROPOLITAN PIER AND EXPOSITION AUTHORITY, a body politic and municipal corporation,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether section 14505 of the ICC Termination Act, 49 U.S.C. § 14505, preempts respondent's tax on departures by motor carrier with passengers for hire from Chicago's O'Hare and Midway airports to destinations within Illinois if that transportation is prearranged.

2. Whether section 14505 preempts a tax on departures from Chicago's airports if the passengers are then transported from those airports to local destinations in southern Wisconsin and northwestern Indiana.

RULE 29.6 STATEMENT

The Metropolitan Pier and Exposition Authority ("MPEA") is a political subdivision, unit of local government, body politic, and municipal corporation. 70 ILCS 210/3.

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Introduction. Petitioners seek to invalidate a nominal tax (the "Departure Tax") that is collected from ground transportation operators departing with passengers from Chicago's O'Hare and Midway airports. They argue that section 14505 of the ICC Termination Act of 1995 ("ICCTA"), Pub. L. No. 104-88, codified at 49 U.S.C. § 14505, preempts and forbids imposition of the Departure Tax on certain operators. However, as this Court's precedents establish, a federal statute does not preempt a state's exercise of its historic powers, such as taxation, absent an unmistakably clear statement from Congress. As the decision below held, there was no such unmistakably clear statement here.

To the contrary, section 14505 does not even address -- much less preempt – taxes like the Departure Tax. As the Illinois Appellate Court explained, the text, structure, and history of the ICCTA demonstrate that Congress had no intention of precluding a tax on commercial motor carriers that carry passengers from metropolitan airports to destinations in the surrounding communities served by those airports. Instead, Congress enacted section 14505 to address a specific and limited danger not presented by the Departure Tax – that one state might disproportionately tax bus transportation through multiple states. The appellate court's unanimous ruling that section 14505 does not preempt the Departure Tax was but a routine application of established principles and raises no issue warranting this Court's review.

Furthermore, there is no conflict among the state or federal courts about the preemptive effect of section 14505. In fact, the decision below is the *only* reported decision to address that provision. Petitioners attempt to manufacture a conflict with this Court's decision in *Aloha Airlines* v. *Director of Taxation*, 464 U.S. 7 (1983). But *Aloha Airlines* addressed a *different* federal statute directed to *different* types of taxes on a *different* industry. *Aloha Airlines* is not even remotely applicable to the issues raised in the petition and thus cannot conflict with the decision below.

STATEMENT OF THE CASE

The Departure Tax. In 1992, the Illinois legislature amended the Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/1 *et seq.*, to authorize a $1 billion expansion of the McCormick Place convention facility. To finance the expansion, the legislation authorized the MPEA, which operates the facilities at McCormick Place, to issue bonds. *Id.* § 210/13.2. To repay the bonds, the legislature directed the MPEA to impose new taxes on businesses that cater to the convention trade and therefore were likely to benefit from an expanded McCormick Place. *Id.* § 210/13. One of those taxes was to be "an occupation tax on all persons * * * engaged in the business of providing ground transportation * * * with passengers for hire from commercial service airports in the metropolitan area." *Id.* § 210/13(f).

In January 1993, the MPEA enacted an ordinance in accordance with section 13(f), which imposed, among other taxes, the so-called "Departure Tax" at issue here. The Departure Tax is levied on departures from Chicago's two commercial airports by three categories of ground transportation providers, as follows (Pet. App. 3a):

> (i) Category 1. For each taxi or livery vehicle departure from a commercial service airport with passengers for hire: $2 per departure.
>
> (ii) Category 2. * * * [F]or each departure from a commercial service airport with passengers for hire: $9 per bus or van with a capacity of 1-12 passengers; $18 per bus or van with a capacity of 13-24 passengers; and $27 per bus or van with a capacity of over 24 passengers.
>
> (iii) Category 3. For each departure from a commercial service airport with passengers for hire in a bus or van operated by a person regulated by the Interstate

Commerce Commission or the Illinois Commerce Commission, and operating scheduled service from the airport, and charging fares on a per passenger basis: $1 per passenger.

Prior Challenges. This is the third time that ground transportation providers have sued to invalidate the Departure Tax. In *Terry* v. *MPEA*, 648 N.E.2d 1047 (Ill. App. 1995), the Illinois Appellate Court rejected uniformity, due process, and equal protection challenges to the tax that were brought by taxicab operators who serve the city of Chicago, emphasizing that vehicle operators "benefit directly" from the expansion project. In *Allegro Services* v. *MPEA*, 665 N.E.2d 1246 (Ill. 1996), the Illinois Supreme Court rejected uniformity, commerce clause, and equal protection claims brought by ground transportation operators who carry passengers from Chicago's airports to surrounding suburban areas in Illinois and to near-by destinations in Wisconsin and Indiana.

The *Allegro* plaintiffs argued that they would not benefit from increased convention traffic at the airports because licensure rules prohibited them from carrying passengers from the airports directly to McCormick Place or downtown hotels. In rejecting their claims, the Illinois Supreme Court explained that the Departure Tax "is a manifestation of legislative policy formed at the State level" that is based on the expectation that "the expanded and improved McCormick Place facilities will lead to a significant increase in tourism to Chicago, thereby boosting certain sectors of the local and regional economy." 665 N.E.2d at 1250, 1257. The Court emphasized that the plaintiffs would benefit from the overall increase in demand for ground transport at the airports and therefore would be among the beneficiaries of the McCormick Place expansion and of the means of financing it. *Id.* at 1254-1255. Noting that the plaintiffs voluntarily availed themselves of the privilege of doing business at the Chicago airports, the court concluded that the Departure Tax is "fairly related to the services provided by

the State," and it upheld the Departure Tax in its entirety. *Id.* at 1257. Petitioners again seek to have the Departure Tax invalidated, now arguing that it is preempted by the ICCTA.

The ICC Termination Act. In the ICCTA, Congress abolished the Interstate Commerce Commission and delegated many of its regulatory responsibilities to other agencies. In Part B of the Act, Congress delegated regulatory authority over interstate motor carrier transportation to the Department of Transportation. 49 U.S.C. §§ 13301, 13501.

Within Part B, Chapter 135 prescribes the limits of federal authority to regulate motor carrier transportation; Chapter 145 concerns "federal-state relations." These provisions differentiate between transportation activities over which the federal government has asserted its authority and others that remain subject to the states' prerogative to tax and regulate inherently local activities. Chapter 135 expressly prohibits federal regulation over, *inter alia*, motor carrier transportation that does not cross a state line (§ 13501), taxicab service (§ 13506(a)(2)), and the transportation of passengers that is "incidental to transportation by aircraft" (§ 13506(a)(8)(A)). Chapter 145, on the other hand, establishes limits on state prerogatives including their ability to impose certain types of taxes on interstate commerce. Section 14505, on which petitioners rely, provides in its entirety:

> "A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on —
>
> (1) a passenger traveling in interstate commerce by motor carrier;
>
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
>
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or

(4) the gross receipts derived from such transportation."

The Trial Court Proceeding. Petitioners operate buses, taxis, and liveries that pick up passengers at the Chicago airports and transport them to local destinations, mostly in Illinois but also in nearby northwestern Indiana and southern Wisconsin. They filed this class action lawsuit in January 1996, claiming that section 14505(2) of the ICCTA preempts and prohibits imposition of the Departure Tax. Pet. App. 4a. Petitioners sued on behalf of two classes of ground transportation providers: (1) Class A, consisting of all commercial ground transport operators that provide passenger transportation from the two Chicago airports to *out-of-state* destinations; and (2) Class B, consisting of operators that provide transportation from the Chicago airports to *in-state* destinations but only to the extent that passengers prearranged that transportation. *Id.* at 5a.

The trial court certified the two classes and granted summary judgment in favor of the plaintiffs with respect to Class A but in favor of the MPEA with respect to Class B. Pet. App. 6a-7a, 36a. The trial court reasoned that taxation of departures from the Chicago airports to Illinois destinations was not prohibited because the passengers do not cross a state line; it concluded that departures to Indiana and Wisconsin could not be taxed because the motor carriers would cross state lines. *Id.* at 33a, 45a-46a.

The Appellate Court Ruling. Petitioners appealed from the trial court's grant of summary judgment in favor of the MPEA with respect to Class B (that is, operators who provide prearranged service *within* Illinois). The MPEA cross-appealed from the court's grant of summary judgment in favor of the Class A plaintiffs (that is, operators who provide service to points *outside* Illinois). The appellate court unanimously held that ICCTA section 14505(2) does not preempt the Departure

Tax with respect to either class. It therefore affirmed the trial court's grant of summary judgment in favor of the MPEA with respect to Class B but reversed the grant of summary judgment in favor of plaintiffs with respect to Class A. Pet. App. 29a.

The appellate court first addressed petitioners' contention that section 14505(2) bars imposition of the Departure Tax on prearranged commercial vehicle departures from the Chicago airports to Illinois destinations. Recognizing that it must "give effect to the legislature's intent," beginning with "the statute's language," the court found that the text of section 14505(2) does not clearly indicate that it applies to prearranged ground transportation trips from an airport located in Illinois to an Illinois destination. Pet. App. 16a-17a. The court concluded that a tax levied on such a purely in-state motor carrier trip is not a tax on "the transportation of a passenger traveling in interstate commerce by motor carrier." *Id.* at 20a.

The court looked to the legislative history to help clarify Congressional intent. Pet. App. 18a. It noted that the House and Conference Reports state that the purpose of section 14505 is to prohibit "a State or political subdivision of a State from levying a tax on bus tickets for interstate travel." *Ibid.* (quoting H.R. Rep. No. 104-311, at 120 (1995); H.R. Conf. Rep. No. 104-422, at 220 (1995)). The court also looked to the Senate Report, which states that section 14505 was "intended to override" this Court's decision "permitting such a tax" in *Oklahoma Tax Commission* v. *Jefferson Lines, Inc.*, 514 U.S. 175 (1995). *Ibid.* After analyzing *Oklahoma Tax Commission* and its background, the court concluded that the limited purpose of section 14505 was to prohibit "a state's imposition of a sales tax upon the whole price of an interstate bus ticket where the contact of the interstate bus trip with the taxing state was minor." *Id.* at 20a. Finding that the Departure Tax did not implicate that purpose, the court held that section 14505 does not bar imposition of the Departure Tax on departures from the airports to Illinois destinations, and it therefore affirmed the

trial court's grant of summary judgment to the MPEA with respect to Class B. *Ibid.*

The court then turned to the MPEA's contention that the trial court erred in ruling that section 14505 bars imposition of the Departure Tax on commercial vehicle departures from the Chicago airports to surrounding localities in Indiana and Wisconsin. Reviewing this Court's preemption cases, the court explained that there can be no preemption "if the goals of the federal and state or local governments are different," and that a state or local tax is not preempted "unless Congress made its intent to preempt 'unmistakably clear in the language of the statute.'" Pet. App. 22a-23a (quoting *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-461 (1991)). Applying those principles, and placing section 14505 "in both its statutory and textual context and comparing it against related provisions contained in the ICCTA," the court held that the ICCTA does not preempt the Departure Tax merely because passengers are transported from the Chicago airports across the nearby Wisconsin and Indiana state lines. *Id.* at 23a.

Analyzing the statutory text, the court determined that "the 'taxable' event to which the airport departure tax attaches is not the interstate transportation of passengers but, rather, the ground transportation departures from the airports." Pet. App. 25a. Analyzing the statutory structure, the court noted that section 13506(a)(2) of the ICCTA exempts taxicab service from federal regulation and that, based on the same exemption in the ICCTA's predecessor statute, this Court had upheld a state fee on taxi operators carrying passengers across state lines. *Id.* at 26a (citing *Buck* v. *California*, 343 U.S. 99 (1952)). In addition, the court noted that section 13506(a)(8)(A) of the ICCTA exempts "transportation of passengers by motor vehicle incidental to transportation by aircraft" from federal regulation and that federal courts had found that exemption applicable to commercial motor carrier trips from airports to local destinations across state lines. Accordingly, the court reasoned,

ground transportation trips from the Chicago airports, even if they cross the Indiana or Wisconsin border, "are 'incidental to transportation by aircraft' and are, therefore, beyond the scope of section 14505." Pet. App. 27a-28a.

Finally, after reviewing the legislative history and statutory purpose of the ICCTA, the court concluded that the Departure Tax does "not disproportionately tax the purchase of bus tickets for travel through multiple states," and there is "[n]o danger of disproportionate taxation" because the taxed motor carriers "have their primary contact with and derive the bulk of their benefits from Illinois." Pet. App. 24a.

The appellate court therefore reversed the trial court's grant of summary judgment in favor of Class A "because the text, structure, and history of section 14505, as well as related provisions in the ICCTA, indicate no congressional intent to preempt taxes on motor carrier departures from airports to homes, hotels, and businesses in communities served by those airports, even if those communities are located in another state." Pet. App. 29a. The Illinois Supreme Court subsequently denied petitioners' request for review. 738 N.E.2d 936 (2000).

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW DOES NOT CONFLICT WITH A DECISION OF THIS OR ANY OTHER COURT.

The decision below is the only reported case addressing section 14505 of the ICCTA. Accordingly, there is no conflict among the state or federal courts about its preemptive effect for this Court to resolve. Petitioners make a strained contention that the appellate court's decision conflicts with decisions in other cases that do not address section 14505 of the ICCTA. But those decisions are not even remotely in conflict with the decision below. Some of the decisions cited by petitioners (at 18) construe *different* statutory provisions which, unlike

section 14505, are expressly preemptive of the state laws at issue.[1/] The other cases cited by petitioners (at 20-21) do not address preemption at all but rather the constitutional meaning of "interstate commerce" for purposes of the dormant Commerce Clause, a question not at issue here. See *infra* part II.

Petitioners' primary argument is that the decision below conflicts with this Court's decision in *Aloha Airlines*. See Pet. 10-12. But the two decisions do not conflict; they address neither the same statute nor the same subject matter. *Aloha Airlines* held that section 1513(a) of the Airport Development Acceleration Act of 1973 ("ADAA") (now codified at 49 U.S.C. § 40116), which prohibits state taxes "on the sale of air transportation or on the gross receipts derived therefrom," expressly preempted a Hawaii tax on the gross receipts of the respondent airlines. This Court explained that by its plain text the ADAA "unambiguously" prohibits "a particular kind of tax," namely, a gross receipts tax of the very type imposed by Hawaii. 464 U.S. at 12. In this case, to the contrary, the statutory provision on which petitioners rely does not unambiguously prohibit – *or even mention* – the "particular kind of tax' challenged by petitioners, namely, a tax on commercial motor vehicle departures from airports. Thus, this case does not raise the express preemption issue addressed in *Aloha Airlines*.

This case also concerns a completely different type of tax from the gross receipts tax at issue in *Aloha Airlines*. The Departure Tax is not levied on petitioners' gross receipts but only on their departures with passengers from the Chicago airports regardless of their ultimate distination. Petitioners

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[1/] The cases petitioners cite involve statutory provisions that expressly prohibit certain types of state regulation of intrastate towing and charter bus operations.

apparently contend that *other* kinds of taxes proscribed by section 1513 of the ADAA – on "persons traveling in air commerce" and on "the carriage of persons traveling in air commerce" – are analogous to the taxes proscribed by section 14505 of the ICCTA and to the Departure Tax. Pet. 10-12. But this Court did not address those kinds of taxes in *Aloha Airlines*, limiting its discussion to the statutory ban on the kind of gross receipts tax imposed by Hawaii. *Aloha Airlines* says nothing about how these other proscriptions in the ADAA should be interpreted and thus cannot possibly be in conflict with the decision in this case.

Moreover, the thrust of Hawaii's position in *Aloha Airlines* was that the ADAA prohibits the imposition of state taxes only on air passengers, not on air carriers, and that Hawaii's tax was really a property tax (which was expressly permitted by the ADAA) rather than a gross receipts tax. 464 U.S. at 13-14. Those issues, too, are not present in this case. Indeed, if there is any similarity between the two cases, it is that petitioners here, like Hawaii in *Aloha Airlines*, seek to avoid the plain meaning of the statutory text.

Aloha Airlines is off point for an additional reason, one that highlights petitioners' flawed attempt to stretch the ICCTA language to reach local taxes on pre-booked local ground transportation departures from airports. The ADAA provisions apply only to "air commerce," which the ADAA broadly defines as "the operation of aircraft that directly *affects* * * * foreign or interstate air commerce." 49 U.S.C. § 40102(a)(3) (emphasis added). That language plainly authorizes a far broader federal regulatory reach than section 14505 of the ICCTA, which applies only to the transportation of a passenger traveling "*in* interstate commerce by motor carrier" (emphasis added). As this Court has emphasized, the statutory phrase "in interstate commerce" expresses Congress' intent to make the scope of a statute narrower than when it uses such terms as "affecting," "involving," or "related to" interstate commerce.

See, *e.g.*, *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 273 (1995); *Russell* v. *United States*, 471 U.S. 858, 859 n.4 (1985); see also *United States* v. *Gillies*, 851 F.2d 492, 494 (1st Cir. 1988). The broader reach of the ADAA provision reflects the fact that there is nothing inherently local about air travel, in contrast to motor carrier travel between airports and destinations located in the metropolitan area.

Finally, petitioners fail to mention that the ADAA does *not* prohibit either state taxes on flights that take off or land in the state (see 49 U.S.C. § 40116(c)) or reasonable landing fees (*id.* § 40116(e)(2)). Those are taxes and fees that, like the Departure Tax, reasonably reflect a fair approximation of benefits gained from the use of airport facilities. In *Northwest Airlines, Inc.* v. *County of Kent*, 510 U.S. 355, 366 (1994), this Court rejected a challenge to airport user fees and held that they did not violate the ADAA. The appellate court's decision in this case is consistent with *Northwest Airlines*, and it does not conflict with *Aloha Airlines*, which was directed to a different statute, a different type of tax, and wholly different issues.[2/]

II. THE DECISION BELOW WAS A ROUTINE APPLICATION OF FEDERAL PREEMPTION PRINCIPLES.

Petitioners offer no reason to think that this case raises an important issue warranting this Court's review. The most they can come up with is that other "local authorities *may* rely on

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[2/] The lack of any conflict between the decision below and *Aloha Airlines* is further underscored by subsequent decisions rejecting claims that the ADAA preempts Hawaii taxes on the *ground* transportation portion of the receipts of air freight carriers. See *Kamikawa* v. *United Parcel Serv., Inc.*, 966 P.2d 648, 652 (Haw. 1998); *Kamikawa* v. *Lynden Air Freight, Inc.*, 968 P.2d 653, 656 (Haw. 1998), cert. denied, 526 U.S. 1087 (1999).

this Illinois decision" to impose taxes on departures from other airports and that "the door will be opened" for other types of taxes on "other industries." Pet. 22 (emphasis added). Such speculation is a far cry from the "compelling reasons" that Rule 10 requires for granting a petition for certiorari. The appellate court appropriately applied well-established principles to the facts of this case. Petitioners offer no reason to re-work well plowed ground.

One such principle is that a federal statute does not preempt the exercise of one of the "historic powers of the States" unless Congress made its intent to preempt "unmistakably clear in the language of the statute." *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-461 (1991); accord *Department of Revenue* v. *ACF Indus., Inc.*, 510 U.S. 332, 345 (1994). Thus, any federal preemption of a state tax requires a plain statement from Congress that such was its intent. *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997). This presumption against federal preemption of state taxes derives from "[p]rinciples of federalism" and the fact that "the taxation authority of state government" is "central to state sovereignty." *ACF Indus.*, 510 U.S. at 345. Petitioners have not rebutted that presumption by showing that Congress clearly and unmistakably intended section 14505(2) of the ICCTA to preempt a tax on commercial motor vehicle departures from airports to surrounding communities.

A. The ICCTA Does Not Plainly Forbid A Tax On Departures From The Chicago Airports To Destinations In Illinois.

Section 14505(2) does not "clearly and unmistakably" ban taxes on motor vehicle departures from airports to destinations within the same state, as petitioners contend. To the contrary, it applies by its terms only to taxes on the "transportation of a passenger traveling *in interstate commerce by motor carrier*" (emphasis added). That language does not purport to

encompass purely *intra*state trips to destinations within Illinois. Even if a passenger being carried to an Illinois destination had just arrived from an interstate flight, that *inter*state travel was *by airplane*, not "by motor carrier," and therefore not addressed by section 14505(2).

Unable to overcome this plain text, petitioners argue that prearranging *intra*state motor carrier trips somehow transforms them into *inter*state trips "by motor carrier." But many passengers who prearrange their airport departure transportation do so before they leave Illinois, in which case there is not even an interstate phone call or fax on which plaintiffs can rely. In any event, this argument cannot be reconciled with the statutory text, which says nothing about prearrangements. Petitioners cite a body of irrelevant case law construing the scope of "interstate commerce" for purposes of determining whether state regulation impermissibly burdens commerce in violation of the dormant Commerce Clause. See Pet. 20-21.[3/] But this case has nothing to do with the reach of

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[3/] See *Executive Town & Country Servs., Inc.* v. *City of Atlanta*, 789 F.2d 1523, 1527 (11th Cir. 1986) (city's minimum fare regulations for limousine service did not unconstitutionally burden interstate commerce); *Charter Limousine, Inc.* v. *Dade County Bd. of County Comm'rs*, 678 F.2d 586, 589 (5th Cir. 1982) (city's exclusive franchise to limousine service did unconstitutionally burden interstate commerce); *Southerland* v. *St. Croix Taxicab Ass'n*, 315 F.2d 364, 369 (3d Cir. 1963) (forcing air passengers to abandon prepaid local transportation in favor of local taxicab operator unconstitutionally burdened interstate commerce). One of petitioners' cases does address the statutory meaning of "interstate commerce" in the Fair Labor Standards Act. See *Airlines Transp., Inc.* v. *Tobin*, 198 F.2d 249 (4th Cir. 1952). But in that case, unlike here, the ground transportation was contractually controlled by the airlines and so not inherently local. See *id.* at 250.

the dormant Commerce Clause or any claimed burden on interstate commerce. In fact, the Illinois Supreme Court in *Allegro* squarely (and preclusively) rejected petitioners' argument, based on that same line of cases, that the Departure Tax unreasonably burdens or discriminates against interstate commerce. *Allegro*, 665 N.E.2d at 1256-57.

As the court below explained, the relevant issue here is not the scope of the dormant Commerce Clause but rather the meaning of the statutory phrase "traveling in interstate commerce by motor carrier" in section 14505(2) of the ICCTA. Petitioners have not cited any cases suggesting that a purely intrastate trip by motor carrier can somehow be deemed "traveling in interstate commerce by motor carrier." Indeed, the case law supports the conclusion that this language was *not* intended to include a purely intrastate trip. In *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 230-231, 233 (1947), for example, this Court held that taxicab trips from Chicago railroad stations to homes, offices, and hotels in the Chicago area are too "casual and incidental" to constitute "interstate commerce" "within the meaning of the Sherman Act" because such service "is not an integral part of interstate transportation." Other federal courts have reached the same conclusion in cases raising similar issues. *E.g.*, *Evanston Cab Co.* v. *City of Chicago*, 325 F.2d 907, 912 (7th Cir. 1963) (a taxicab ride from O'Hare Airport to an outlying Chicago suburb is but "a local ride in a local taxicab" and not in interstate commerce for purposes of the Sherman Act); *Mateo* v. *Auto Rental Co.*, 240 F.2d 831, 835 (9th Cir. 1957) (prearranged limousine transportation from metropolitan airport was not "in commerce" for purposes of the Fair Labor Standards Act but rather was "activity of a purely local nature"). The appellate court's decision that riding from an Illinois airport to an Illinois destination is not "traveling in interstate commerce by motor carrier" was both true to the statutory text and entirely consistent with this well established body of law.

Furthermore, administering petitioners' proposed distinction between "prearranged" and other ground vehicle departures from airports to in-state destinations would be all but impossible. Given the multitudes of passengers exiting Chicago's airports, distinguishing between those who called ahead to arrange their rides from those who did not would present enormous difficulties. Congress cannot possibly have intended that Section 14505 would give rise to such an administrative quagmire. See *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 71 (1982) ("Statutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible").

B. The ICCTA Does Not Plainly Forbid A Tax On Departures From The Chicago Airports To Destinations In Indiana And Wisconsin.

Section 14505(2) does not "clearly and unmistakably" forbid a tax on motor carrier departures from an airport whenever the ultimate destination is a surrounding community across a state line. The Departure Tax is not comparable to the type of taxes banned by section 14505. It is not imposed on "the *transportation* of a passenger traveling in interstate commerce by motor carrier" but rather on passenger *departures* from the Chicago airports. Thus, the tax is not correlated to the amount of transportation (*i.e.*, to the distance traveled). It applies even if the departing passengers, such as airport employees or meeting attendees, did not travel in interstate commerce at all. Moreover, the tax applies to *all* departures by commercial ground transportation from the airports, regardless of how near or how far the ultimate destination may be.

In other words, the Departure Tax does not tax the transportation of passengers in interstate commerce but rather the benefits that commercial carriers derive from their use of the airport, similar to the tolls that states routinely impose for use of a tollway or bridge. Petitioners earn revenues from the

passengers that McCormick Place attracts to the airports, they are taxed a nominal sum for their use of the airports upon departure, and those taxes are used to finance the McCormick Place expansion. See *Western Air Lines, Inc.* v. *Board of Equalization*, 480 U.S. 123, 132 (1987) (no preemption by federal statute designed to prevent discriminatory taxation where "the specter of discriminatory burdens on the carrier is avoided by the recycling of the tax revenues into the specific facilities used by the carrier"). Seeking the proverbial free lunch, petitioners want to enjoy those benefits but not pay the roughly one dollar per passenger Departure Tax to help defray the costs of expanding the very facilities that attract so many passengers to the airports.

Significantly, Congress *did* employ unmistakably clear preemptive language in other sections of the ICCTA. For example, section 14501(a)(1)(C) clearly and unmistakably forbids any state or local government from enacting laws relating to "the authority to provide intrastate or interstate charter bus transportation," and section 14502(b)(3) clearly and unmistakably forbids any state or local ad valorem property tax on motor carrier transportation property at a rate higher than on other commercial and industrial property in the same area. If Congress had adopted similar language in Section 14505 — such as "no state or subdivision thereof may collect or levy a tax on commercial motor carrier departures from airports" — this would be a very different case. But Congress did not do so, and petitioners' attempt to re-write the statute to fit their purposes cannot turn a routine application of established principles into a certworthy case.

In addition, reading section 14505 in its statutory context demonstrates that Congress did not intend to prohibit taxes like the Departure Tax, even when passengers are transported to destinations across a state line. The motor carrier provisions of the ICCTA leave the states free to regulate and tax motor

carrier transportation of an inherently local character.[4] In particular, the ICCTA exempts from federal regulatory authority all motor carrier transportation that is "incidental to transportation by aircraft" (§ 13506(a)(8)(A)) or that provides "taxicab service" (§ 13506(a)(2)). See *National Bus Traffic Ass'n* v. *United States*, 249 F. Supp. 869 (N.D. Ill. 1965) (motor vehicle trips from Washington, D.C. airport across Maryland state line are "incidental to transportation by aircraft" and thus exempt from federal regulation), aff'd per curiam, 382 U.S. 369 (1966); *Buck* v. *California*, 343 U.S. 99, 100, 102 (1952) (upholding California permit fee on taxis transporting passengers across Mexican border because "[t]he operation of taxicabs is a local business" and Congress "left the field" of taxicab regulation "largely to the states"); *Yellow Cab Co.* v. *Cab Employers*, 457 F.2d 1032 (9th Cir. 1972) (taxi transportation of passengers between Nevada airport and California was not "in interstate commerce" for purposes of the Sherman Act). It makes no sense to assume that Congress explicityly preserved state regulation of motor carrier trips from airports to surrounding communities, yet intended to preempt any state taxation of the very same airport-related businesses.[5]

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[4] See *Wardair Canada, Inc.* v. *Florida Dep't of Revenue*, 477 U.S. 1, 7 (1986) (rejecting contention that Federal Aviation Act preempted state tax on sale of aviation fuel and recognizing that the power to tax is coextensive with the power to regulate).

[5] Petitioners contend (at 16-17) that these statutory exclusions have no bearing on whether section 14505 preempts the Departure Tax. They rely on a district court case, *Greyhound Lines, Inc.* v. *City of New Orleans*, 29 F. Supp. 2d 339 (E.D. La. 1998). In *Greyhound Lines*, the court held that ICCTA § 14501(a), a provision that expressly forbids states or localities from enacting laws or regulations relating to "the authority to provide *intrastate or interstate* charter bus transportation," preempted a city permit requirement for

Furthermore, the legislative history answers any doubts about the limited scope of section 14505. Congress sought to address a particular danger, raised by a recent decision of this Court, that one state might disproportionately tax bus transportation through multiple states. See *supra*, p. 6. The Departure Tax raises no such danger, because, as the Illinois Supreme Court held in *Allegro*, it is reasonably related to services provided in Illinois and applies only to departures from the Chicago airports to surrounding localities. 665 N.E.2d at 1258-1259. Petitioners obtain their passengers by taking advantage of the services and economic opportunity provided to them by Illinois and its airports (as well as by McCormick Place). That opportunity to pick up passengers at Chicago's major international airports is at the heart of petitioners' business activity and is the focus of the Departure Tax. See *Goldberg* v. *Sweet*, 488 U.S. 252, 261-263 (1989) (rejecting argument that Illinois tax on interstate calls originating in Illinois created a risk of multiple taxation, because no other state could reasonably impose an identical tax). Thus, the Departure Tax does not present the type of problem that Congress sought to remedy through section 14505, and the appellate court properly rejected petitioners' argument that it does.[6/]

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intrastate charter bus drivers. (Emphasis added.) That holding plainly does not speak to the question at issue here, involving a statutory provision that does not contain any such expressly preemptive language.

[6/] Petitioners argue (at 16) that so limiting the meaning of section 14505 would make subparagraphs (1) and (2) superfluous. But one need only read all four subsections to see that Congress designed them to work together to prevent states from taxing the busness of transporting passengers in interstate commerce. The four subsections together make clear that such taxes are forbidden no matter whether they are directed to the

In short, Congress intended only a limited strike against a very specific problem, not a broad assault on state use taxes like the Departure Tax. Petitioners may prefer not to be taxed for the benefits they receive from the increase in their business created by the McCormick Place expansion, but any redress must come from the Illinois legislature, not from the courts. That reasoned conclusion of the Illinois Appellate Court is fully consistent with this Court's precedents and raises no issue appropriate for this Court's review.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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"passenger," the "transportation," the "sale," or the "gross receipts" of an interstate motor carrier. None is superfluous, and none purports to prohibit taxation related to the use of airports.